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No. -

In the Supreme Court of the United States

OCTOBER TERM, 1983

BOARD OF LICENSE COMMISSIONERS
OF THE TOWN OF TIVERTON,
PETITIONER,

v.

LOUIS H. PASTORE, JR., in his capacity as
Liquor Control Administrator of the
State of Rhode Island and
ATTIC LOUNGE, INC.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE RHODE ISLAND SUPREME COURT

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I.

QUESTION PRESENTED

Whether the exclusionary rule, prohibiting as violative of the Fourth Amendment to the United States Constitution the use in a criminal trial of evidence obtained pursuant to an unlawful search and seizure (the Fourth Amendment made applicable to the states through the Fourteenth Amendment), should properly be applied to exclude the admission of such evidence in a civil administrative proceeding.

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PETITION FOR A WRIT OF CERTIORARI TO THE RHODE ISLAND SUPREME COURT

Opinion Below

The opinion of the Rhode Island Supreme Court in the instant case is cited at 463 A.2d 161 and is set forth in the Appendix herein, pages A-1 through A-10.

Jurisdiction

The Petitioner here seeks review of the decision in this matter rendered by the Rhode Island Supreme Court on July 18, 1983 to the extent that said decision upholds the Providence

County Superior Court in its determination that the exclusionary rule, prohibiting pursuant to the Fourth and Fourteenth Amendments of the United States Constitution the use in a criminal trial of evidence obtained pursuant to unlawful search and seizure, is properly applicable to the proceedings of a municipal liquor license control board. In this case, such a ruling prevented the Petitioner from receiving unlawfully obtained evidence, evidence which if admissible, would have justified the revocation of a liquor license.

Subsequently, the United States Supreme Court granted Petitioner's request for an extension of time within which to file a Petition of Certiorari to December 15, 1983.

The Court's jurisdiction to review the decision of the Rhode Island Supreme Court by Writ of Certiorari is conferred by 28 U.S.C. Section 1257 (3).

Constitutional Provisions Involved

1. The Fourth Amendment to the Constitution of the United States.

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

2. The Fourteenth Amendment to the Constitution of the United States.

> All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life,

> liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Also relevant are Rhode Island General Laws Section 9-19-25 cited at A-12, and Rhode Island General Laws Section 3-5-23 cited at A-11.

Statement of the Case

This Petition comes before this Court as a request to review a decision of the Rhode Island Supreme Court, which decision in turn was a review of a lower Rhode Island court decision pursuant to a Certiorari Petition requested by the Board of License Commissioners of the Town of Tiverton, Rhode Island. In Tiverton, as in other Rhode Island cities and towns, the Town Council serves as a Board of License Commissioners for the purpose of granting, renewing, suspending or terminating liquor licenses within the town. In March of 1977, Respondent, the Attic Lounge, Inc. was a licensed liquor-serving establishment within the Town of Tiverton. On March 11, 1977 several Tiverton police officers entered the Lounge pursuant to a search warrant and found stolen property on the premises. As a result, two actions were initiated. Criminal proceedings were initiated against individuals associated with the Attic Lounge by the State of Rhode Island for possession of stolen property. At the same time, the Tiverton Town Council, acting as a Board of License Commissioners, revoked the bar's liquor license pursuant to Rhode Island General Laws Section 3-5-23 after a hearing at which evidence of the finding of the stolen property was presented. Rhode Island General Laws Section 3-5-23 provides for the revocation of a liquor license where a licenseholder permits any of the laws of the State of Rhode Island to be violated on the licensed premises. (R.I. G.L. Section 3-5-23 is recited in full at A-11) The criminal proceedings were ultimately dismissed after a judge of the

Rhode Island Superior Court (Rhode Island's criminal trial court) held that the search warrant obtained by the Tiverton police to search the Lounge was defective.

The principals of the Attic Lounge, Inc. appealed the revocation of the Lounge's liquor license to Respondent Louis Pastore, then Liquor Control Administrator for the State of Rhode Island. The Administrator held a de novo hearing on July 6, 1978 and received undisputed evidence that a conviction for possession of stolen property had never been obtained against any individual associated with the Lounge. The Administrator, believing that a conviction was necessary in order for a town to assert the provisions of R.I.G.L. 3-5-23, reversed the revocation of the Lounge's license and ordered that the license be reinstated.

Thereafter Petitioner filed an appeal to the Providence County Superior Court (which had statutory authority to review rulings of the Liquor Control Administrator) which affirmed the Administrator's ruling. The Superior Court held that the Administrator had erred in holding that a conviction was necessary to revoke a liquor license pursuant to R.I.G.L. Section 3-5-23. However, the Court held that because evidence of the stolen property at the Attic Lounge premises had been obtained pursuant to a void search warrant, the exclusionary rule barred the presentation of such evidence before the Board of License Commissioners which could not therefore rely upon it in revoking the Attic Lounge's liquor license.

Petitioner then filed a Petition for Writ of Certiorari with the Rhode Island Supreme Court seeking review of the Superior Court's decision. That petition was granted by the Rhode Island Supreme Court which reviewed the Superior Court's decision and affirmed the holding that the exclusionary rule ought properly to be extended to municipal liquor license revocation proceedings. Petitioner seeks judicial review by this Court of the Rhode Island Supreme Court's decision.

The Rhode Island Supreme Court in its decision discussed the genesis of the exclusionary rule, (which bars the admission in a criminal trial of evidence obtained by an illegal search and seizure) in *Weeks* v. *United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914), and its later extension to state criminal trials in *Mapp* v. *Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). The acceptance of this rule in Rhode Island is symbolized by the enactment by the Rhode Island General Assembly of Rhode Island General Laws Section 9-19-25 (A-12) which codifies as an evidentiary rule in criminal trials in Rhode Island the provisions of *Weeks* and *Mapp*.

The Rhode Island court admitted that it could find no decision by this Court determinative of the question of whether the exclusionary rule should be applied to administrative hearings. Its decision to extend the rule to the liquor license hearing in issue was heavily dependent on this Court's decision in *One 1958 Plymouth Sedan* v. *The Commonwealth of Pennsylvania*, 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965). This appeal concerned a petition by the Commonwealth of Pennsylvania for the forfeiture of an automobile which had allegedly been used to transport unsealed liquor bottles. The discovery of the liquor bottles was determined to have resulted from an illegal search and seizure. This Court extended the exclusionary rule to the forfeiture proceeding relying on an earlier decision in *Boyd* v. *United States*, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 (1886), that forfeiture proceedings, though denominated civil by the Commonwealth, were quasi-criminal in nature and therefore subject to the same constitutional protections as purely criminal proceedings. The *Plymouth Sedan* ruling relied heavily on the reasoning, also dispositive in *Boyd*, that any proceeding instituted for the purpose of forfeiting a man's property because of offenses committed by him is criminal in nature, and therefore subject to the restraints of the exclusionary rule.

The Rhode Island court also touched on this Court's ruling in *United States* v. *Calandra*, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974), from which it extracted the holding that in extending the exclusionary rule past the initial criminal trial, the potential benefits of applying the rule were to be balanced against the potential for damage from such application. The Rhode Island court however was decidedly unbalanced in applying the balancing test, for it limited its consideration only to the benefits of extension, with very little discussion of the disadvantages. In support of its holding the court relied on the New York Court of Appeals decision in *Finn's Liquor Shop* v. *State Liquor Authority*, 24 N.Y.2d 647, 249 N.E.2d 440, 301 N.Y.S.2d 584, *cert. denied* 396 U.S. 840, 90 S.Ct. 103, 24 L.Ed.2d 91 (1969) which extended the exclusionary rule to liquor license proceedings and by express dicta, to any administrative hearings involving penalties, forfeitures and other sanctions. Both *Finn's* and the Rhode Island decision as well, contain holdings that the exclusionary rule should not be limited in its application where there is any indication that such limitation would encourage future illegal searches.

The Rhode Island Supreme Court also discussed this Court's ruling in *United States* v. *Janis*, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976), in which this Court declined to extend the exclusionary rule to civil proceedings that were intersovereign in nature, e.g., where the law enforcement officer conducting the unlawful search had no responsibility to the agency now seeking to use the fruits of the search for evidence. The Rhode Island court however distinguished *Janis* by typifying the factual situation before it as *intra*sovereign, no doubt because the Tiverton police who searched the Attic Lounge were indeed servants of the Board of License Commissioners when the Board was wearing its Council hat.

The Rhode Island court noted Petitioner's argument that it had declined to extend the rule to probation revocation hearings (*State* v. *Spratt*, 120 R.I. 192, 386 A.2d 1094 (1978)), or

to bail revocation hearings (*Bridges* v. *Superior Court*, 121 R.I. 101, 396 A.2d 97 (1978)). The court's response however was to find a greater public interest in supervision over bail and probation offenders than in the proper conduct of enterprises licensed to sell and distribute alcoholic beverages. This, together with the court's concern that unconstitutionally obtained evidence not be admissible in "quasi-criminal" administrative proceedings, chiefly explain the decision which it reached.

Reasons for Granting the Writ

Petitioners believe that the question presented by this petition, the correctness of applying the exclusionary rule to civil administrative proceedings, has not received direct consideration by this Court, and has received disparate treatment by various state supreme courts.

This Court's most relevant rulings are *One 1958 Plymouth Sedan* v. *Commonwealth of Pennsylvania*, *supra*, which extended the rule to forfeiture proceedings because of the quasi-criminal nature of the proceedings, *United States* v. *Calandra*, *supra*, where the question of whether to extend the rule to grand jury hearings gave rise to the "balancing test" referred to by the Rhode Island Supreme Court, and *United States* v. *Janis*, *supra*, a decision responsible for the before discussed "intersovereign rule."

Of these, the *Calandra* balancing test and the *Plymouth Sedan* quasi-criminal test are most referred to by state courts in wrestling with this issue. At one extreme is the New York Court of Appeals, which in *Finn's Liquor Shop* v. *State Liquor Authority*, *supra*, has held that the rule must be applied to all administrative hearings if its function of deterring police misconduct is to be fulfilled.

Not all jurisdictions have gone this far. The decision at issue is Rhode Island's first pronouncement on the issue of extending the rule to civil administrative hearings, though earlier Rhode

Island decisions have, after balancing the interests, declined to extend the rule to probation revocation hearings (*State* v. *Spratt*, *supra*) or bail revocation hearings (*Bridges* v. *Superior Court, et al.*, *supra*). Although the Rhode Island court declined to generalize, language in its opinion (A-9) would indicate that it is unlikely to be sympathetic to limitations on the rule in other administrative settings—the proscription of criminal behavior through licensing not being viewed as vital a public concern as the supervision of bail and probation violators.

The Ohio and Illinois Supreme Courts have held otherwise in two cases cited in Petitioner's brief to the Rhode Island Supreme Court but not discussed in its decision. The Illinois Supreme Court in *Daley* v. *Berznaskis*, 47 Ill.2d 395, 269 N.E.2d 716, *cert. denied* 402 U.S. 999, 91 S.Ct. 2173, 29 L.Ed.2d 166 (1971) declined to extend the exclusionary rule to liquor license revocation hearings, despite this Court's holding in *Plymouth Sedan*, holding the unique nature of the liquor business to be such as justified more intense governmental supervision. The Ohio Supreme Court held similarly in *Soloman* v. *Liquor Control Commission*, 3 Ohio St.2d 31, 212 N.E.2d 595 (1965), *cert. denied* 384 U.S. 928, 86 S.Ct. 1445, 16 L.Ed.2d 531. Both Ohio and Illinois held that application for a liquor license constitutes assent to any reasonable, but warrantless, search a license authority might make as a means of supervising liquor-serving establishments.

A leading California case is *Emslie* v. *State Bar of California*, 11 Cal.3d 210, 113 Cal. Rptr. 175, 520 P.2d 991 (1974) concerning extension of the rule to attorney disciplinary proceedings of the state bar association. California has traditionally applied a balancing test, but the *Emslie* court also had as precedent a California decision very similar to *Plymouth Sedan*, *People* v. *One 1960 Cadillac Coupe*, 62 Cal.2d 92, 41 Cal. Rptr. 290, 396 P.2d 706 (1964). In *Cadillac*, the California Supreme Court had similarly held the rule applicable to

forfeiture proceedings which, by their nature, were held to be quasi-criminal both in the potential for deprivation of liberty or property, and in the close identity of such proceedings with the aims and objectives of criminal law enforcement.

In *Emslie* however, the California Supreme Court declined extension, believing that no deterrent effect on police conduct would result and that social considerations—protection of the courts and the integrity of the legal profession—mandated a different result from *Cadillac*. The *Emslie* decision has since been relied on by a lower California appellate court to deny extension of the rule to liquor license revocation proceedings. See *Baxter Rice* v. *Alcoholic Beverages Control Appeals Board, et al.*, 187 Cal. Rptr. 117, 137 Cal.App.3d 478 (1982).

Petitioner believes that the diverging results reached by these state courts in extending the exclusionary rule to administrative proceedings mandate that this Court clarify what the appropriate judicial test should be in extending the rule to such hearings, if it is to be extended to administrative hearings at all. The existence of three relevant United States Supreme Court decisions has allowed lower Supreme Courts to choose the test they believe will support the decision they wish to make. Thus, a court wishing to justify extension of the rule (e.g., the Rhode Island Supreme Court in the case at bar and the New York Court of Appeals in *Finn's*) does so by emphasizing the quasi-criminal aspects of the administrative hearing and the possibility of a penalty or forfeiture which may result. A court which wishes to maintain a looser approach (such as the California Supreme Court) relies on the balancing test, tackling the question of extension of the rule on a case by case basis. It is the use of the balancing test however which leads to the most divergent results—a good example is to contrast the importance to society attributed to liquor license control by the Rhode Island Supreme Court in the case at bar with that attributed by the Illinois court in *Daley*.

California's case by case approach may seem the most judicious. However, the lack of predictability which such an approach engenders should cause this Court to be skeptical that the results will enhance the efficacy of the exclusionary rule or administrative justice in general. This Court, in *United States* v. *Janis, supra*, found the cost to society too high, and the marginal additional deterrence too low to forbid the use of tainted evidence in a civil proceeding by a sovereign different from the authority employing the errant police. Although the *Janis* court specifically declined to comment on the possibility of such attenuated deterrence in "intrasovereign" situations, such as here,[1] the thrust of that decision is that extension of the exclusionary rule should not be encouraged where the additional deterrence factor will be low. What seems clear to Petitioner is that the various rulings by state courts on the issue posed by this Petition have resulted in another form of attenuation; law enforcement officers in most jurisdictions pursue their search for criminally relevant evidence knowing that unlawful methods will result in such evidence being excluded from criminal proceedings, but they have very little certainty that such evidence would be excluded in any other forum. Without such certainty, it is unlikely that the possible inadmissibility of such evidence at a later civil hearing has any effect on their conduct. Petitioner doubts that this Court would support the blanket extension of the exclusionary rule advocated by the New York Court of Appeals, but as a practical matter it is only in such jurisdictions that law enforcement officers proceed with any assurance as to the treatment of improperly obtained evidence in any civil proceeding where it might be relevant. Short of adopting the New York rule, this

[1] There is even a question in Petitioner's mind as to whether the instant case presents an intra or intersovereign issue. Admittedly the Tiverton police officers were employees of a Town Council sovereign, which in another guise served as a Board of License Commissioners. However, in conducting the initial search of the Attic Lounge, the police officers were essentially acting as enforcers of state law.

Court's clarification of proper and/or improper extension of the rule to civil administrative hearings would standardize state supreme court rulings on this question, and hopefully insure a more even-handed, practical application of the rule.

Petitioner believes that the forfeiture test of *Plymouth Sedan* needs further refinement and may have outlived its usefulness. It seems safe to say that most administrative hearings where tainted evidence would be relevant could be labelled quasi-criminal because of the possibility of a disposition such as a forfeiture (as of an automobile), a penalty such as a fine, loss of a property right (such as a liquor license), or loss of a job (such as in *Emslie*). Petitioner does not believe that this Court would intend that its *Plymouth Sedan* holding be applied as broadly as it was applied by the Rhode Island Supreme Court below which termed a liquor license revocation proceeding quasi-criminal (and ergo subject to the exclusionary rule) since its object is to penalize for the commission of an offense against the law. (A-4) As it stands now, however, the forfeiture test, or quasi-criminal test can be interpreted to justify extension of the rule to most, if not to all, administrative hearings at which it would be relevant.

Petitioner believes that review of the Rhode Island Supreme Court holding below represents an excellent opportunity for this Court to review and further clarify the issue of civil extension of the exclusionary rule. The Rhode Island court's heavy reliance upon the *Plymouth Sedan* quasi-criminal standard would give this Court an opportunity to state whether it is in fact correct to extend the exclusionary rule to a hearing simply because one of the results of the hearing may be a penalty. Petitioner suspects that this Court would not countenance such a conclusion, the effect of which would be to negate the balancing test proposed by this Court in *Calandra*.

Review would also give this Court an opportunity to clarify proper application of the balancing test, particularly with regard to civil administrative proceedings and to further

define what type of societal interests should be of greatest judicial concern as opposed to the marginal deterrence achieved by further extension of the rule. Again, the instant case would be an excellent one for review since liquor control hearings provide a common forum where application of the rule has been raised, with differing results. Petitioner believes that this Court would decline to approve such extension, but would hold instead that the phalanx of laws, regulations and licensing requirements enacted by all states and municipalities to control liquor sales evidence a societal concern that the sale of liquor be carried out in a law abiding manner and that the potential for criminal activity and/or involvement be limited.

Finally, this case will give this Court a chance to answer the question remaining unanswered from its *Janis* decision, how courts should evaluate "intrasovereign" applications of the exclusionary rule. Petitioner believes that the doubts expressed by the *Janis* court as to the utility of the rule in discouraging police misconduct would cause it to overrule the Rhode Island Supreme Court, and to hold that the rule is misapplied when it is extended to civil administrative hearings, such as liquor control hearings.

Conclusion

The Rhode Island Supreme Court's decision placed the Town of Tiverton in the position of being compelled to license a liquor-serving establishment known to be a storage site for stolen property, run by principals who had obviously participated in the commission of a theft. Believing that such a result represents an unwarranted extension of the exclusionary rule, Petitioner requests that this Court issue a Writ of Certiorari to review the decision of the Rhode Island Supreme Court below.

Respectfully submitted,

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Appendix A

SUPREME COURT

No. 80-426-M.P. No. 0251E

BOARD OF LICENSE COMMISSIONERS
OF THE TOWN OF TIVERTON

v.

LOUIS H. PASTORE ET AL.

OPINION
JULY 18, 1983

WEISBERGER, J. This case comes before us on petition for certiorari seeking review of a Superior Court judgment that affirmed a ruling of the Liquor Control Administrator reinstating the class-BV liquor license of the Attic Lounge (the Lounge). The only issue before this court is whether evidence obtained pursuant to an illegal search and seizure is admissible in a liquor-license revocation hearing. We find that the trial justice committed no reversible error. Accordingly, we affirm.

The facts in this case may be briefly summarized as follows. On March 11, 1977, a Tiverton police sergeant, pursuant to a search warrant, entered and searched the Lounge. He discovered stolen property on the premises. Thereafter, the Board of License Commissioners of the Town of Tiverton (the board), held a hearing at which the Lounge failed to show cause why its liquor license should not be suspended for permitting state law to be violated, pursuant to G.L. 1956 (1976 Reenactment) § 3-5-23. The board voted to revoke the estblishment's liquor license, thereby prompting an appeal to the State Liquor Control Administrator (the administrator). During the pendency of this appeal, a Superior Court justice, in a criminal proceeding stemming from the same incident, ruled that the search of the Lounge was illegal.

Pursuant to respondent's appeal, the administrator held a de novo hearing on July 6, 1978. Therein undisputed testimony was introduced establishing that a conviction for possession of stolen property had never been obtained against any individual associated with the Lounge. The administrator therefore refused to entertain any evidence concerning the search of the premises or the results thereof. Accordingly, he found that because a conviction for receiving stolen goods had never been obtained, there was no justification for revocation of the Lounge's liquor license. He therefore ordered that the license be reinstated.

Thereafter, petitioners filed an appeal to the Superior Court, which affirmed the administrator's ruling. The Superior Court justice disagreed with the rationale utilized by the administrator, however, when she found that a conviction was not necessary to revoke a liquor license pursuant to G.L. 1956 (1976 Reenactment) § 3-5-23. Nevertheless, the court held that since the search of respondent's premises was illegal in nature any evidence or testimony concerning the search was properly excluded by the administrator.

The petitioners contend that the exclusionary rule should not be applicable in a liquor-license revocation hearing. Although we have not heretofore passed upon this issue, courts elsewhere have ruled the evidence inadmissible. We agree with that result.

The exclusionary rule, which bars the admission in a criminal trial of evidence obtained by an illegal search and seizure, was first promulgated by the United States Supreme Court in *Weeks* v. *United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914), and was later extended in application to state criminal proceedings by the decision in *Mapp* v. *Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). A precise overall definition of the type of proceeding, other than criminal, to which the rule should be applied has not yet been determined. Indeed, the Supreme Court has not yet decided

whether the exclusionary rule will be construed to apply to administrative hearings. 1 LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 1.5 at 97 (1978). Nonetheless, by reference to Supreme Court decisions on related matters and to persuasive precedent from other jurisdictions, we feel that there is a sufficient basis upon which to conclude that the exclusionary rule is applicable to a liquor-license revocation hearing. *Id.*, § 1.5 at 97-98.

In *One 1958 Plymouth Sedan* v. *Commonwealth of Pennsylvania*, 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965), the State of Pennsylvania sought to confiscate a vehicle pursuant to a statute that provided for the forfeiture of a vehicle carrying unsealed liquor. However, in criminal proceedings, the owner was acquitted because of the exclusion of the illegally seized liquor. The court held that although forfeiture proceedings are civil in nature, the exclusionary rule should apply. Quoting with approval language from *Boyd* v. *United States*, 116 U.S. 616, 634, 6 S.Ct. 524, 534, 29 L.Ed. 746, 752 (1886), the Court held that

> "[i]f the government prosecutor elects to waive an indictment, and to file a civil information against the claimants,—that is, civil in form,—can he by this device take from the proceeding its criminal aspect and deprive the claimants of their immunities as citizens, and extort from them a production of their private papers, or, as an alternative, a confession of guilt? This cannot be. The information, though technically a civil proceeding, is in substance and effect a criminal one.*** As, therefore, suits for penalties and forfeitures incurred by the commission of offenses against the law, are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution***." 380 U.S. at 697-98, 85 S.Ct. at 1249, 14 L.Ed.2d at 173.

Thus *Plymouth Sedan* stands for the proposition that the exclusionary rule should apply to proceedings that are " 'quasi-criminal' in character" in that their object "is to penalize for the commission of an offense against the law." 1 LaFave, § 1.5 at 98. Accordingly, it is reasonable to conclude that the exclusionary rule applies in administrative proceedings, wherein a state agency, responsible for control of liquor sales, is empowered to impose fines or declare forfeitures of licenses for criminal acts and other violations by those operating or connected with the establishment. *Id.* Professor LaFave comments that the Court in *Plymouth Sedan* indicated that a forfeiture proceeding could result in punishment greater than the criminal prosecution for the underlying conduct. This strongly suggests that a highly relevant factor to be considered is the magnitude of the consequences for the individual involved. Therefore, other courts have appropriately stressed the seriousness of taking away a person's license to operate an establishment selling liquor. *Finn's Liquor Shop* v. *State Liquor Authority*, 24 N.Y.2d 647, 249 N.E.2d 440, 301 N.Y.S.2d 584, *cert. denied*, 396 U.S. 840, 90 S.Ct. 103, 24 L.Ed.2d 91 (1969); *Leogrande* v. *State Liquor Authority*, 25 A.D.2d 225, 268 N.Y.S.2d 433 (1966), *rev'd on other grounds*, 19 N.Y.2d 418, 227 N.E.2d 302, 280 N.Y.S.2d 381 (1967); *Pennsylvania Liquor Control Board* v. *Leonardziak*, 210 Pa. Super. 511, 233 A.2d 606 (1967). Thus, "it would be anomalous***to hold that in [a] criminal proceeding, illegally seized evidence is excludable, while in [a] forfeiture proceeding, requiring the determination that the criminal law has been violated, the same evidence would be admissible." *Plymouth Sedan*, 380 U.S. at 701, 85 S.Ct. at 1251, 14 L.Ed.2d at 175.

In *United States* v. *Calandra*, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974), the approach of the Court was to balance the potential benefits of applying the exclusionary rule, namely the added deterrence, against the potential damage

from such application. Hence, a second important consideration in determining whether the exclusionary rule should apply in administrative proceedings is the extent to which exclusion would deter illegal searches and seizures. Thus, exclusion for purposes of deterrence would be justified if admission of the evidence could be expected to encourage future illegal searches by such agents because of their expectation that in any event the evidence would be admissible in the administrative process.

Various state courts have considered this issue. In *Finn's Liquor Shop* v. *State Liquor Authority*, *supra*, the New York Court of Appeals held that the exclusionary rule, concerning illegally seized evidence is applicable to administrative proceedings before the State Liquor Authority with respect to imposition of penalties on license holders. The court in its opinion stated that if the exclusionary rule is to be effective, it may not be limited to purely criminal proceedings. The court declared that "[i]t is no longer subject to question that [s]tate agencies charged with purely administrative responsibilities, just as those engaged in the enforcement of the criminal law, must conduct their investigative and enforcement functions in compliance with constitutional requirements and, more particularly, within the confines of the Fourth Amendment. (*See*, *Camara* v. *Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967); *See* v. *City of Seattle*, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967))." *Finn's Liquor Shop*, 24 N.Y.2d at 654, 249 N.E.2d at 442-43, 301 N.Y.S.2d at 588.

In *Leogrande* v. *State Liquor Authority*, *supra*, the Appellate Division of the New York Supreme Court held that evidence obtained by search warrants indicating that the licensee engaged in gambling activities on and off the licensed premises could not be used by the State Liquor Authority as a basis for the cancellation of an establishment's license when the search warrants in related criminal cases had been vacated for want of probable cause. In so holding the court stated that

"the reasons in policy which [support] the application of the exclusionary rule to illegal searches and seizures by public officers in criminal proceedings apply equally to administrative proceedings." 25 A.D.2d at 231, 268 N.Y.S.2d at 440. Such proceedings include those involving penalties, forfeitures or other sanctions for the violation of law. "The exclusionary rule rests on a theory of deterrence; that policy would not be served if the illegal official activity could be used, despite unavailability in criminal proceedings, to effect parallel sanctions of forfeiture in an administrative proceeding." *Id.* at 232, 268 N.Y.S.2d at 440.

The applicability and rationale behind the use of the exclusionary rule in liquor-board administrative hearings is further set forth in *Pennsylvania Liquor Control Board* v. *Leonardziak*, *supra*. Therein the court held that

> "[t]he purpose of the exclusionary rule is'* * * to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.' *Elkins* v. *United States*, 364 U.S. 206, 217 (1960). The policy of deterring unconstitutional activity by suppressing evidence would not be served if police, after being barred from using evidence against a licensee in a criminal court, could use the identical evidence to punish with equal or greater severity through the machinery of the Liquor Control Board." 210 Pa. Super. at 514, 233 A.2d at 608.

For these reasons, we believe that it is certainly appropriate to apply the exclusionary rule in administrative proceedings when the police have searched premises known to be licensed for the sale of liquor and have turned over the fruits of the search to the administrative agency empowered to revoke the license. 1 LaFave, § 1.5 at 100. Accordingly, we hold that a board of liquor-license commissioners should not be permitted to avail itself of the fruits of an illegal search in order to impose sanctions upon the persons whose constitutional rights have been violated.

The petitioners contend, however, that the holding in *Plymouth Sedan*, is inapplicable to the present controversy. Their contention is based on the assertion that a proceeding that is quasi-criminal in nature is different from a liquor-license revocation hearing that is civil in nature. *Chernov Enterprises, Inc.* v. *Sarkas*, 109 R.I. 283, 284 A.2d 61 (1971); *Cesaroni* v. *Smith*, 98 R.I. 377, 202 A.2d 292 (1964). A careful analysis of the Supreme Court's definition of a quasi-criminal proceeding, however, reveals that this argument misses the mark. In *Plymouth Sedan* the Court, agreeing with the determination of Mr. Justice Bradley in *Boyd*, found that a forfeiture proceeding is quasi-criminal in nature in that its object is to penalize for the commission of an offense against the law. 380 U.S. at 700, 85 S.Ct. at 1250, 14 L.Ed.2d at 175. Although technically a civil proceeding, a license revocation based on an illegal search and seizure to uncover stolen goods is in substance and effect a quasi-criminal proceeding since its object is to penalize for the commission of an offense against the law, thereby invoking the application of the exclusionary rule.

The petitioners further suggest that *United States* v. *Janis*, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976), provides support to a jurisdiction hesitant about expanding the scope of the exclusionary rule. We do not concur. In *Janis*, the Supreme Court held that evidence seized by a state criminal-law-enforcement officer in good faith, but nonetheless in an unconstitutional manner is admissible in a civil proceeding brought by or against the United States. The Court distinguished between two types of situations for the purpose of applying the exclusionary rule in civil proceedings: (1) those cases in which the officer committing the unconstitutional search or seizure was an agent of the sovereign that sought to use the evidence (intrasovereign) and (2) those cases in which the officer had no responsibility or duty to, or agreement with, the sovereign seeking to use the evidence (intersovereign).

However, the Court specifically declined to rule on the applicability of the exclusionary rule in an intrasovereign setting, which is the situation before us on review. Nevertheless, we believe that the potential deterrent effect of the exclusionary rule on the agents of an intrasovereign agency is strong enough to outweigh the costs to society of refusing to admit evidence obtained in violation of constitutional imperatives. *See* 1 Ringel, *Searches & Seizures, Arrests and Confessions*, § 3.6(c) at 3-32 (1982).

Our view is supported by the recent decision in *Lopez-Mendoza* v. *Immigration and Naturalization Service*, 705 F.2d 1059 (9th Cir. 1983), which dealt with the intrasovereign situation enunciated in *Janis*.[1] The court held that when an "offending officer and the prosecutor share a common goal, the deterrent effect of the exclusionary sanction is maximized: an officer will have little incentive to violate the Fourth Amendment if he knows that tainted evidence will be worthless to the prosecutorial agency he serves." *Id.* at 1069.

The petitioners, in support of their position that the exclusionary rule should not apply to liquor-license revocation hearings, urge us to utilize the same rationale that we used in *State* v. *Spratt*, 120 R.I. 192, 386 A.2d 1094 (1978), and *Bridges* v. *Superior Court*, 121 R.I. 101, 396 A.2d 97 (1978). We are not so persuaded. In *Spratt*, the question of the application of the exclusionary rule was confronted in the context of a probation-revocation hearing whereas in *Bridges* we dealt with this issue in the context of a bail-reduction proceeding. Obviously, the prospect of having either a convicted violator or an individual charged with a crime who has violated the conditions of his

[1] Concededly, *Lopez-Mendoza* v. *Immigration and Naturalization Service*, 705 F.2d 1059 (9th Cir. 1983), has a more compelling fact pattern than the case at bar to apply the exclusionary rule, because the Ninth Circuit court was dealing with a situation that not only was intrasovereign but also was intra-agency (Immigration and Naturalization Service). The general principles enunciated in that case, however, are applicable to the present controversy.

bail escape the consequences of his or her actions by application of the exclusionary rule would impose a substantial threat to society. Although the state has an interest in the proper conduct of enterprises licensed for the sale and distribution of alcoholic beverages, such interest does not weigh so heavily in determining the applicability of the exclusionary rule as does the appropriate supervision of persons who are on bail after having been formally charged with the commission of criminal offenses or on probation after having been convicted of a criminal offense. Furthermore, in deciding that the exclusionary rule should not apply in *Spratt* and *Bridges*, we enunciated the test to be used when we said:

> "[C]onsider whether any incresed deterrence of future police misconduct would result from extending the rule and then balance that incremental increase against the risks to society that extension is likely to produce." 120 R.I. at 194, 386 A.2d at 1095.

In *Mapp* the Supreme Court of the United States emphasized that the deterrence of police misconduct and the policy that the government should not benefit from its own wrongdoing are to be accorded great weight in this balancing process. Therefore, the Superior Court properly analyzed the effect of this balancing test on the issue at bar by concluding that evidence obtained as a result of an illegal police search is inadmissible at a hearing before the administrator.

Finally, petitioners contend that there is legislative justification for the admission of improperly obtained evidence in liquor-license revocation hearings. The petitioners cite G.L. 1956 (1977 Reenactment) §§ 3-12-3 and 3-2-6 in support of this proposition. We believe that petitioners misconceive the thrust of these statutes and tend to confuse the question of right of access to the premises with the question of applicability of the exclusionary rule. Section 3-2-6 authorizes access by inspectors or other officers charged with the duty of supervision or inspection of places licensed to deal in alcoholic beverages. Section 3-12-3 provides that municipal officials, which term

includes but is not limited to police officers, and members of the state police, may enter the premises of licensed premises "to ascertain the manner in which such person conducts his business and to preserve order." These statutes allow a right of access to licensed premises for the purpose of enforcing those statutes and regulations that relate to the conduct of licensed liquor establishments. Obviously, while such officers are properly upon the premises, they may act appropriately in respect to any violations of law that are committed in their presence or may act in respect to any evidence that may properly be within plain view. *See Texas* v. *Brown*, __ U.S. __, __ S.Ct. __, 75 L.Ed.2d 502 (1983); *Coolidge* v. *New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

In this case, however, we are not confronted with the question of the propriety of the search and seizure that was allegedly conducted by a police officer of the Town of Tiverton. The police officer obtained a traditional criminal search warrant, and this search warrant was declared to be constitutionally infirm by a justice of a court of competent jurisdiction. Thus, the question of the validity of this search and seizure is not presently before this court.[2]

The sole question before us is whether evidence found by a court to be illegally obtained may be admitted in a proceeding for forfeiture of a license before the administrator. We hold that the exclusionary rule is applicable to such hearings and that evidence determined by a court or by the administrator to have been illegally obtained may not be admitted.

For the reasons stated, the petition for certiorari is denied. The writ heretofore issued is quashed. The judgment of the Superior Court is affirmed, and the papers in the case may be remanded to the Superior Court with our decision endorsed thereon.

[2] We recognize that the criteria for searches of regulated premises are less stringent than those applicable to other structures. *See United States* v. *Biswell*, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972) (gun licensee); *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72, 90 S.Ct. 774, 25 L.Ed.2d 60 (1970) (liquor licensee).

Appendix B

Rhode Island General Laws

3-5-23. Revocation of license for criminal offenses or disorderly convictions — Action on bond. If any licensed person shall be convicted of violation of any of the provisions of this title, or of chapter 6, chapter 10, chapter 34, chapter 40 or chapter 45 of title 11, or of §11-2-1, §11-3-4, §11-9-13, §11-9-15, §11-11-5, §11-11-6, §§11-18-2, to 11-18-4, inclusive, §11-20-1, §11-20-2, §11-23-4, §11-27-20, §§11-30-1 to 11-30-11, inclusive, §11-31-1 or §§11-37-2 to 11-37-4, inclusive, or shall plead guilty or nolo contendere to any complaint or indictment thereunder, or if his license shall be revoked, his bond shall be put in suit by the town or city treasurer of the town where such bond is given, and by due process of law the penal sum thereof shall be recovered for the use of said town or city. If any licensed person shall permit the house or place where he is licensed to sell beverages under the provisions of this title to become disorderly so as to annoy or disturb the persons inhabiting or residing in the neighborhood thereof, or shall permit any gambling or unlawful gaming to be carried on therein, or shall permit any of the laws of this state to be violated therein, in addition to any punishment, penalty or penalties which may be prescribed by statute for such offense, he may be summoned before the board, body or official which issued his license or before the liquor control administrator when he and the witnesses for and against him may be heard; and if it shall be made to appear to the satisfaction of the board, body or official hearing such charges that he has violated any of the provisions of this title or has permitted to be done any of the things hereinbefore in this section mentioned, then said board, body or official may suspend or revoke his license or enter other order thereon. In case such license is revoked, such licensed person after such revocation shall cease to have any authority under said license and shall

be disqualified from holding any of the licenses provided for in this title for a period of five (5) years next following such revocation. And the revocation of a license, as aforesaid, shall not interfere with or prejudice the right of recovery upon his bond for the full amount thereof.

9-19-25. Illegally seized evidence inadmissible. In the trial of any action in any court of this state, no evidence shall be admissible where the same shall have been procured by, through or in consequence of any illegal search and seizure as prohibited in section 6 of article 1 of the Constitution of the State of Rhode Island.